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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/465,853 12/17/99 ELSBERG

L 15497

EXAMINER

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QMI2/0123

WEFR..T

ART UNIT

PAPER NUMBER

3761

DATE MAILED:

01/23/01

[Signature]

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary	Application No.	Applicant(s)
	09/465,853	ELSBERG ET AL.
	Examiner Jamisue A. Webb	Art Unit 3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 04 December 2000.
 2a) This action is FINAL. 2b) This action is non-final.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-9,11,12,15-29 and 32-44 is/are pending in the application.
 4a) Of the above claim(s) 10,13,14,30 and 31 is/are withdrawn from consideration.
 5) Claim(s) _____ is/are allowed.
 6) Claim(s) 1-9,11,12,15-29 and 32-44 is/are rejected.
 7) Claim(s) _____ is/are objected to.
 8) Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
 10) The drawing(s) filed on _____ is/are objected to by the Examiner.
 11) The proposed drawing correction filed on _____ is: a) approved b) disapproved.
 12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
 * See the attached detailed Office action for a list of the certified copies not received.
 14) Acknowledgement is made of a claim for domestic priority under 35 U.S.C. & 119(e).

Attachment(s)

- 15) Notice of References Cited (PTO-892) 18) Interview Summary (PTO-413) Paper No(s). _____.
 16) Notice of Draftsperson's Patent Drawing Review (PTO-948) 19) Notice of Informal Patent Application (PTO-152)
 17) Information Disclosure Statement(s) (PTO-1449) Paper No(s) 6. 20) Other:

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DETAILED ACTION

Election/Restrictions

1. Claims 10, 13-14, and 30-31 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in Paper No. 5.

Specification

2. The disclosure is objected to because of the following informalities: Specification is missing a description of reference number 88, in figure 5.

Appropriate correction is required.

3. A substitute specification including the claims is required pursuant to 37 CFR 1.125(a) because the margin at the top of the pages was too small, and therefore when the application was placed in the file wrapper, holes punched at the top of the pages caused a number of words to become missing.

A substitute specification filed under 37 CFR 1.125(a) must only contain subject matter from the original specification and any previously entered amendment under 37 CFR 1.121. If the substitute specification contains additional subject matter not of record, the substitute specification must be filed under 37 CFR 1.125(b) and must be accompanied by: 1) a statement that the substitute specification contains no new matter; and 2) a marked-up copy showing the amendments to be made via the substitute specification relative to the specification at the time the substitute specification is filed.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

5. Claims 1-2, 7-9, 12, 15-20, 25-27, 29, 32-37, 39, 43-44 are rejected under 35 U.S.C. 102(e) as being anticipated by Blenke et al. (6,022,430). With respect to Claim 1, 20 and 37: Blenke discloses a diaper (20) with an absorbent chassis (44), a front waist region (22), a rear waist region (24), end edges (32), and side edges (30). Blenke also discloses a fit panel (70), with releasably engageable primary fasteners (62, column 14, lines 52-54) located on outboard edges (72), and a waist adjustment means that provide a pair of secondary fasteners (66, column 14, lines 49-56), and a pair of perforations lines, that provide the secondary fasteners (column 7, line 64 to column 8, line 15).

6. With respect to Claims 1, 7, 16, 20, 25, 33, 37, Blenke discloses the use of fasteners that releasably engage, such as hook and loop type fasteners (column 14, lines 45-52).

7. With respect to Claims 8 and 26, Blenke discloses the use of an attachment panel (68).

8. With respect to Claim 9, Blenke discloses the fit panel being linear (See Figure 4).

9. With respect to Claims 12, 17, 29, 34, and 43, Blenke discloses the fit panel being attached to the bodyfacing surface of the outercover (column 15, lines 31-65).

10. With respect to Claims 15, 18-19, 32, 35-36, and 44, Blenke discloses the side panels with provide the primary and secondary fasteners (See all figures, particularly Figure 4), with the

primary fasteners releaseably engaging the front waist (column 16, lines 24-40), and the secondary fasteners greater than 5 percent the total width of the fit panel (see Figure 4).

11. With respect to Claim 27, Blenke discloses the diaper (20) with an outercover (42) with backsheet (46) and bodyside liner (48).

Claim Rejections - 35 USC § 103

12. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

13. Claims 11, 28 and 42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Blenke et al. (6,022,430) in view of Vogt et al. (6,149,638).

Blenke discloses that outercover of the diaper being made of non-woven material (column 9, lines 52-65), but fails to teach the outercover being necked non-woven.

Vogt discloses the an absorbent article with an extensible outercover being made of necked nonwoven spunbonded material (column 8, lines 2-5).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have the outercover of the diaper of Blenke, being made of a necked non-woven material, as disclosed by Vogt, in order to make the outercover extensible so the absorbent pad does not tear, and absorbent material does not spill out of the article (see Vogt, column 1).

14. Claims 3-6, 21, 23-24, and 38-41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Blenke et al. (6,022,430) in view of Brandon et al. (5,916,203). Blenke and

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Schmidt fail to teach the use of the fit panel elongating at least 50% and comprising latent elastic material, an elastic member, and an elastomeric material.

Brandon discloses a composite material with elasticized portions that can be used in the elastic parts of absorbent articles and comprises a latent material (14), an elastic material (12) in which it comprised an elastomeric material (column 4, lines 48-52), and the elastic material having an elongation from 50% to 150% (column 6, lines 56-59).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have the fit panel of Blenke comprise the material and elongate as disclosed by Brandon, in order for the elasticized portions to conform the garment to the wearer's body and prevent leakage. (see Brandon, column 1)

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jamisue A. Webb whose telephone number is (703) 308-8579.

The examiner can normally be reached on M-F (8:30 - 5:00).

The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-3590 for regular communications and (703) 306-4520 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1148.

jaw *gw*
January 17, 2001


DENNIS RUHL
PRIMARY EXAMINER